

FILED

MAY 14 2012

PATRICK E. DUFFY CLERK

BY

Deputy Clerk

**U.S. DISTRICT COURT
BILLINGS DIVISION**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR 10-63-BLG-RFC
)	CV 12-62-BLG-RFC
Plaintiff/Respondent,)	
)	
vs.)	ORDER DISMISSING PETITION
)	
WILLIAM LORENZO CUSHING,)	
)	
Defendant/Petitioner.)	
)	

On May 14, 2012, Defendant Cushing, acting through counsel, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 under this cause number.

Cushing's petition is so sparse on detail as to suggest counsel did not conduct an investigation that was reasonable under the circumstances prior to filing. A habeas petition under § 2241 is a civil action and cannot be filed as a motion in the criminal case. A \$5.00 filing fee is required, but it will be waived on this occasion.

It appears, however, by process of elimination, that Cushing is currently in

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custody at FCI Phoenix in Arizona. *Compare* Br. in Supp. of Pet. (doc. 2) at 2 (stating that Cushing is “slated for release in the fall of next year”), *with* BOP Inmate Locator, <http://www.bop.gov/iloc2/LocateInmate/jsp> (accessed May 14, 2012) (entries for “William Cushing”). That being so, Cushing names the incorrect Respondent, *see Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“the default rule is that the proper respondent is the warden of the facility where the prisoner is being held”), and there is no personal jurisdiction under § 2241 in this District, *id.* at 450-51.

Because Cushing alleges no facts that could support a determination that transfer to cure want of jurisdiction would be in the interests of justice, 28 U.S.C. § 1631, dismissal without prejudice is appropriate.

Accordingly, IT IS HEREBY ORDERED:

1. The Clerk of Court shall moot the petition in the criminal case and open a new civil case for this matter, naming Cushing as the Petitioner and the United States as the putative Respondent.
2. The filing fee for the new civil matter is WAIVED.
3. Cushing’s petition under 28 U.S.C. § 2241 is DISMISSED WITHOUT PREJUDICE.
4. The Court CERTIFIES, pursuant to Fed. R. App. P. 24(a)(3)(A), that any

appeal from this disposition would not be taken in good faith and Cushing should not be permitted to prosecute an appeal in forma pauperis.

DATED this 14th day of May, 2012.

A handwritten signature in black ink, appearing to read "Richard F. Cebull", written over a horizontal line.

Richard F. Cebull, Chief Judge
United States District Court